IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.146 OF 2004

Bajaj Auto Ltd.,
A company incorporated and
Registered under the Indian
Companies Act, 1913, having its
registered Office at :- Akurdi,
Pune - 411 035. ..Petitioner

Versus

1. Mrs.Sharayu Jugalkishore Gupta,
Age - Adult, Occ: Business,
R/at 200, Narayan Peth,
Laxmi Road, Pune - 411 030.

2. Mrs.Shailaja Prakash Pant,
Age - Adult, Occ: Household,
R/at- 32, Shivathirth No.1,
Bhulabhai Desai Road,
Mumbai - 400 026.

3. Shri Anu Sanayal Talapatra,
Age - Adult, Occupation-Service,
R/at CTS No.97, Erandavane,
Prabhat Road, Pune - 411 004. ..Opponents
(Opp.Nos.1 & 2 Org. Plaintiffs No.1 & 2, Opp.No.3 Org.Deft. No.2.)

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Shri S.R.Ganbavale for the petitioner.

Shri A.V.Anturkar with Mrs.Vinita V.Bakre-Shastry for the respondent No.1.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 20th DECEMBER, 2004.

ORDER :

1. Heard the learned advocates for the petitioner

and the respondent No.1.

2. The petitioner challenges the order dated 13th August, 2004 passed by the Civil Judge, Senior Division, Pune, in Civil Suit No.1 of 2002 rejecting the application of the petitioner for amendment to the written statement of the petitioner.

3. The respondent Nos.1 and 2 had filed the said suit for eviction of the petitioner and the respondent No.3 from the suit premises which is sought to be contested by the petitioner. During the pendency of the suit, the petitioner filed an application for amendment to the written statement which came to be objected to by the respondent Nos.1 and 2 and the trial Court, after hearing the parties, dismissed the same by the impugned order. Hence, the present petition.

4. At the outset, the learned advocate appearing for the petitioner has raised the preliminary point regarding non-maintainability of the revision application before the High Court by referring to Section 26A of the Provincial Small Cause Courts Act, 1887, hereinafter called as "the said Act", while contending that the appropriate forum for revision

application is the District Court. The said objection is sought to be countered on behalf of the petitioner by referring to Section 25 of the said Act and placing reliance in the decision of the learned Single Judge of this Court in **Dilip Murlidhar Lohiya v. Mohd. Azizul Haq Mohd. Abdul Haq,** reported in 1990(Supp) Bom.C.R. 589 = 1990(1) Mh.L.J.249.

5. Section 25 of the said Act provides that "The District Judge, for the purpose of satisfying himself that a decree or order made in any case decided by a Court of Small Causes was according to law, may of his own motion, or on the application of an aggrieved party made within thirty days from the date of such decree or order, call for the case and pass such orders with respect thereto as he thinks fit."

6. It is to be noted that Section 26A which is to be found in Chapter IV-AI of the said Act, which has been introduced in the said Act by the State Amendment, relates to the subject of "recovery of possession of certain immovable property and certain licence fees and rent". Section 26(1), which is the first section under the said Chapter, provides that "notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub-section (2),

the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings." Sub-section (2) of Section 26 provides that "nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporation Act, 1919 or the Maharashtra Housing and Area Development Act, 1976, or any law for the time being in force, apply."

7. Plain reading of the provisions of Sections 26 and 26A under Chapter IV-AI, it would reveal that the provisions relating to appeal under Section 26A specifically refer to the decree and order passed by the Court of Small Causes under Section 26 and not

under any other provision of the said Act. Sub-section (2) of Section 26A specifically refers to an appeal which is required to be filed in terms of sub-section (1). Sub-section (3) of Section 26 provides that there shall be no other appeal against the order to be passed in the appeal filed under sub-section (1) of Section 26A. In the very said section 26A, sub-section (4) deals with the revisional powers of the District Court. Undoubtedly, it relates to "a decree or order made in any case decide by the Court of Small Causes". However, it is pertinent to note that the said provision is to be found in Section 26A which essentially relates to the appellate jurisdiction pertaining to the orders passed in the proceedings under Section 26 and not under any other provisions of the said Act. Obviously, therefore, while revisional powers under Section 25 of the said Act are available against any order passed under the said Act, there is specific provision regarding revisional power to the District Court in relation to the orders passed in the proceedings initiated under Section 26 of the said Act.

8. Once there is specific provision dealing with specific types of the order or any order passed in the specific types of the proceedings under a Statute,

party cannot decide or chose a forum different from the one provided under the Statute. As it is apparent that Section 26A is essentially in relation to the decree or order passed in the proceedings under Section 26 of the said Act, and such appellate jurisdiction includes the revisional powers to the District Court in relation to the orders passed in such proceedings, obviously, it would be necessary for the aggrieved party in relation to any order passed in such proceedings to approach the District Court, in case no appeal lies against such orders. The question of such party approaching the High Court under Section 25 of the said Act therefore cannot arise.

9. The decision of the learned Single Judge in **Dilip Murlidhar Lohiya's case (supra)** was totally on the different issue. That was on the issue as to whether the revision was maintainable against the interlocutory orders or not and not on the point as to whether the revisional jurisdiction is to be exercised under Section 25 or under Section 26A(4) of the said Act, and therefore, the said decision is of no help to the petitioner in the case in hand.

10. Once it is apparent from the statutory provision that a revisional jurisdiction is available

to the District Court apart from the fact that it specifically provides such jurisdiction in relation to the orders passed in the proceedings under Section 26, even otherwise where there is concurrent jurisdiction available to two different forums, certainly the aggrieved party has to approach the authority lower than in rank between the two such authorities. That has been well explained by the learned Single Judge in **Padmanath Keshav Kamat v. Shri Anup R. Kantak & Ors.,** reported in 1998(5) Bom.C.R.546, while dealing with the concurrent revisional jurisdiction available under Section 397 of the Code of Criminal Procedure, 1973 to the High Court as well as to the Sessions Court. Placing reliance in the decision of the Division Bench in the matter of **Madhavlal Narayanlal Pittie v. Chandrashekhar Chaturvedi,** reported in 1975 Vol.77 BLR 633, it was held by the learned Single Judge in the matter of Shri Padmanabh Keshav Kamat's case (supra) that "exercise of revisional powers is not a matter of course but it is a matter of rare and sparing use. Hence, as pointed out above when two forum are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower forum. It is certainly within the discretion of the higher forum, that is, this Court to consider

whether it should entertain or not of such a revision application which can lie before the Sessions Judge." Considering that there is a specific provision in relation to the revisional powers of the District Court pertaining to the orders passed in the proceedings initiated under Section 26A, even assuming that there are two forums for exercise of revisional jurisdiction under the said Act, it would be appropriate for this Court itself not to exercise such powers when the lower Court, i.e. the District Court, can exercise such powers. Indeed, that appears to be the message conveyed by the Apex Court in **P.N.Kumar & Anr. v. Municipal Corporation of Delhi,** reported in (1987) 4 SCC 609, where it was held that if the parties get relief at the High Court, they need not come to the Apex Court. The same principle would apply when the revisional powers are available to the High Court as well as by the District Court, and certainly it would be appropriate for this Court to allow the parties to approach the District Court for exercise of such jurisdiction.

11. It is not in dispute that the suit in question is between the landlord and the lessee. It is also not in dispute that the provisions of Maharashtra Rent Control Act, 1999 are not applicable. Being so, it is

obvious that the order having been passed by the Small Causes Court in the proceedings under Section 26, the provisions of Section 26A are squarely attracted. Undoubtedly, sub-section (1) of Section 26 provides for appeal against the decree as well as the and Sub-section (4) provided for revisional powers to the District Court.

12. It is to be noted that Section 25 of the said Act, undoubtedly, speaks of revisional powers of the High Court in relation to the orders passed by the Court of Small Causes. However, once there are specific provisions in relation to the orders passed in certain proceedings to be revisable to the District Court, question of taking recourse to general provisions of Revision under Section 25 cannot arise. Besides, the District Court is lower in rank to the High Court in the judicial hierarchy and considering the availability of the two forums for exercise of revisional jurisdiction, it would be appropriate for this Court to refrain from exercising such powers and leave the parties to pursue the remedy before the District Court.

13. For the reasons stated above, therefore, the objection raised on behalf of the respondents is to be

upheld and the Revision Application is rejected, with no order as to costs.